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April 5, 2005

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

RE: D.T.E. 04-116- Investigation by the Department of Telecommunications and Energy On Its Own Motion Regarding the Service Quality Guidelines Established in Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies, D.T.E. 99-84 (2001)

Dear Secretary Cottrell:

Please find attached an original and nine (9) copies of the Reply Comments of Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company, d/b/a NSTAR Electric and NSTAR Gas Company (together with NSTAR Electric, "NSTAR") in the above-referenced proceeding. Please contact me or Kerry Britland at NSTAR if you have any questions regarding the Company's Reply Comments.

Very truly yours,

Cheryl M. Kimball

Enclosure
cc: Caroline Bulger, Hearing Officer
Joseph Rogers, Assistant Attorney General
Service List

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its Own Motion Regarding the Service Quality Guidelines Established in Service Quality Standards For Electric Distribution Companies and Local Gas Distribution Companies, D.T.E. 99-84 (2001)	D.T.E. 04-116

REPLY COMMENTS OF BOSTON EDISON COMPANY, CAMBRIDGE ELECTRIC LIGHT COMPANY, COMMONWEALTH ELECTRIC COMPANY AND NSTAR GAS COMPANY

I. INTRODUCTION

Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company d/b/a NSTAR Electric ("NSTAR Electric"), and NSTAR Gas Company (together with NSTAR Electric, "NSTAR" or the "Company") submit the following reply comments in response to initial comments filed on March 1, 2005 in the above-referenced proceeding. On that date, electric and gas companies serving customers in the Commonwealth[1] (including NSTAR) filed comments in the proceeding along with the Office of the Attorney General (the "Attorney General"), Associated Industries of Massachusetts ("AIM"), Constellation New Energy ("Constellation"), the International Brotherhood of Electrical Workers, Local 103

[1] In addition to NSTAR, the following electric and gas companies filed initial comments in this proceeding: (1) Bay State Gas Company ("Bay State"); (2) The Berkshire Gas Company ("Berkshire"), (3) Boston Gas Company, Colonial Gas Company and Essex Gas Company, each d/b/a KeySpan Energy Delivery New England ("KeySpan"); (4) Fitchburg Gas & Electric Company ("Fitchburg"), (5) Massachusetts Electric Company and Nantucket Electric Company ("National Grid"); (6) New England Gas Company ("New England Gas"); and (7) Western Massachusetts Electric Company ("WMECo").

("IBEW") and the Utility Workers Union of America, including Locals 273, 369 and 654 (the "UWUA"). As requested by the Department of Telecommunications and Energy (the "Department") in its Request for Comments in this docket, the comments addressed issues regarding possible changes to the Service Quality Guidelines (the "SQ Guidelines") established by the Department in Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies, D.T.E. 99-84 (2001) ("D.T.E. 99-84").

The majority of the initial comments submitted to the Department support the continuation of the SQ Guidelines in their current form, with only modest changes recommended. More comprehensive changes are recommended by the Attorney General, Constellation, the IBEW, the UWUA, and AIM. In these reply comments, NSTAR responds first to the initial comments on the Department's specific questions and then provides comment on additional issues raised by the Attorney General, Constellation, and the IBEW and UWUA.

II. RESPONSES TO DEPARTMENT QUESTIONS

A. Role of Offsets in Future SQ Guidelines

1. Summary of Comments

In its Request for Comments, the Department inquired whether: (1) the offset provision of the SQ Program offers an incentive for an LDC to improve SQ; and (2) the use of penalty offsets should be continued in the future SQ Guidelines. Request for Comments at 2. Along with AIM, all of the electric and gas companies stated that the offset component provides an important incentive to improve service quality (AIM Comments at 1; Bay State Comments at 4; Berkshire Comments at 6; Fitchburg Comments at 3; KeySpan Comments at 7-9; National Grid Comments at 3-4; New

England Gas Comments at 9-11; NSTAR Comments at 11-13; WMECO Comments at 2-3). Constellation asserted that offsets create an incentive to approve performance "up to the level where penalties for poor performance on other measures are offset" (Constellation Comments at 9). The remainder of the commenters did not offer an opinion on whether offsets provide an incentive to improve service quality.

In addition, a majority of the commenters favored the continued availability of offsets in future SQ Guidelines. The electric and gas companies supported the continued availability of offsets to address concerns regarding the mathematical underpinnings of the standard-deviation calculation used to establish the performance deadbands, particularly in relation to measures where only limited historical data is available to calculate such deadbands (Bay State Comments at 3; Berkshire Comments at 6-7; Fitchburg Comments at 3; KeySpan Comments at 4-7; New England Gas Comments at 3-8; NSTAR Comments at 6-11; WMECO Comments at 3-4; see also National Grid Comments at 3).

AIM and the Attorney General favored the continued availability of offsets on a more limited basis. Specifically, AIM recommended that offsets should be applied "only to closely related performance measures" (AIM Comments at 1).[2] The Attorney General recommended further limiting the availability of offsets to "exceptional or significantly improved performance compared to state, regional or national standards or averages for closely related performance measures" (Attorney General Comments at 3).

Other commenters opposed the continued availability of offsets. Constellation's suggested that the Department replace the offsets with incentives "for exemplary

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2 AIM also recommended that the Department change its Guidelines to not allow a gas company's odor call response time to be eligible for offsets (AIM Comments at 1).

performance" (Constellation Comments at 9). The UWUA opposed the continued availability of offsets based on claim that offsets "undermine the purpose of service quality standards" by allowing a company to "choose not to address sub-standard performance in one area because it knows it can easily exceed the benchmark in another area" and obtain offsets to avoid a penalty (UWUA Comments at 6-7).

2. The Department Should Continue Allowing Offsets for Superior Service Quality Performance

NSTAR opposes elimination of, or limitations to, the availability of performance offsets because offsets are designed to: (1) protect against the imposition of inappropriate penalties, where such penalties are the result of statistical rather than actual service quality degradation (as a result of Type 1 errors); and (2) provide an incentive to improve service quality. Significantly, the commenters recommending limitation of the offsets do not address the role that offsets play in safeguarding against inappropriate penalties. D.T.E. 99-84-B at 2; D.T.E. 99-84, at 28. In addition, there is no rationale offered for applying offsets only to "closely related performance measures." In fact, the Company's performance on each of the service-quality measures is independent from performance on other measures because the Company uses distinct resources and staff to perform the tasks associated with each measure. Accordingly, there is no rationale for applying offsets in artificial "subsets" of service-quality categories.[3]

[3] Moreover, the Department's SQ Guidelines already address the Attorney General's specific recommendation that offsets should be limited to those categories where "exceptional performance" has been achieved (see Attorney General Comments at 3). Offsets may be earned only once a company's performance has exceeded 1 standard deviation from its historic benchmark, with maximum offsets available only if a company's performance has exceeded 2 standard deviations from its historical benchmark. D.T.E. 99-84 (Guidelines at § VII). These thresholds require "exceptional" performance given the difficulty of improving upon historic levels of performance, particularly in categories where several years of data exists for establishing a benchmark.

In addition, the UWUA claims that offsets should be eliminated altogether because they allow companies to avoid addressing substandard performance. However, this argument ignores the reality that, even if offsets have the effect of reducing penalties in a given year, the utility's annual service quality report will report the service-quality degradation to the Department and the Attorney General. Thus, regardless of whether an actual penalty is incurred, issues are raised to management's attention and the companies remain at risk for scrutiny and action by the Department. The Department has emphasized that the objective of the SQ Program is not to penalize companies, but to provide management with incentives to conduct business in a manner that maintains the quality of service to customers. D.T.E. 99-84, at 49, n. 37 (August 17, 2000). This incentive exists where service problems are identified and open to scrutiny by the utility's constituencies and the availability of offsets does not undermine or change this incentive. Accordingly, the Department should reject the UWUA's recommendation to eliminate the availability of offsets.[4]

B. Increasing the Benchmark for Responding to Odor Calls

1. Summary of Comments

In its Request for Comments, the Department solicited comment on whether: (1) the Response to Odor Calls benchmark should be strengthened in the future SQ Guidelines; and (2) multiple calls regarding a single gas leak should be considered as a single odor call response. Request for Comments at 2. The gas companies recommended maintaining the existing "95 percent" benchmark for responding to odor calls because:

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4 Given the Department's stated reasons for allowing offsets, i.e., to safeguard against the imposition of inappropriate penalties, the Department should consider providing the opportunity to earn incentives. Incentives serve a similar purpose to offsets, in that they protect against the imposition of unfair penalties and provide a stimulus to companies to improve SQ performance.

(1) each of the LDC's historical performance data is based on this standard; (2) the standard is generally accepted throughout the gas industry; (3) the standard has ensured the safe and reliable delivery of gas to customers in the Commonwealth since its adoption by the Department in D.T.E. 99-84; and (4) the fact that a particular service-quality goal is "obtainable" is not a basis for setting a higher performance benchmark, unless the main objective of the higher benchmark is to create a greater potential for the utility to be penalized. (see Bay State Comments at 5-6; Berkshire Comments at 8-9; Fitchburg Comments at 4-5; KeySpan Comments at 11; New England Gas Comments at 13; NSTAR Comments at 16).

The Attorney General and the UWUA both supported increasing the benchmark above the current 95 percent threshold (subject to input by the gas companies), although only the UWUA offered a specific benchmark for consideration (i.e., 98 percent) (Attorney General Comments at 3; UWUA Comments at 7).[5] The Attorney General qualified his recommendation by noting that, "there is a limit on how far the benchmarks can be strengthened because, at some point, there will be diminishing returns from additional investment in service quality" (Attorney General Comments at 3).

2. The Department Should Not Increase the Odor Call Response Time Benchmark.

The Department should reject the recommendations of the Attorney General and the UWUA to increase the Response to Odor Calls benchmark. The Attorney General bases his recommendation on the argument that, "without this enhancement, the LDCs may actually be unacceptably slow in responding to odor calls, yet avoid penalties by

5 AIM, Constellation and the IBEW did not comment on this question.

counting multiple calls as a single gas leak (Attorney General Comments at 3). The Attorney General does not substantiate the claim that LDC response time may be "unacceptably slow," nor do the performance statistics of the LDCs support that contention. In fact, the UWUA contradicts the Attorney General, referencing the high odor call response performance of NSTAR Gas, Bay State Gas and Berkshire Gas during 2003 (each had Odor Call Response times above 97.7 percent). In light of this superior performance, UWUA recommends that the Department increase the benchmark because it is "easy to achieve" (UWUA Comments at 7). Neither the Attorney General nor the UWUA offer any support for their claims, nor do they articulate a basis for identifying a standard other than the 95 percent standard. Accordingly, the Department should maintain the current 95 percent benchmark for responding to odor calls in future SQ Guidelines.

3. The Department Should Not Change its Guidelines Regarding the Treatment of Multiple Calls Relating to a Single Gas Leak.

With regard to the Department's question regarding whether multiple calls relating a single gas leak should be treated as a single odor call response, the gas companies recommended that no change to the Department's Guidelines were necessary or warranted because the general practice of the gas companies is to treat multiple calls regarding a single gas leak as a single odor call response, unless they are not able to determine that a particular succession of calls are related to a single odor source (Bay State Comments at 6; Berkshire Comments at 9-10; Fitchburg Comments at 5; KeySpan Comments at 13; New England Gas Comments at 15; NSTAR Comments at 18). No other commenters provided an opinion regarding this question, and therefore, the Department should accept the recommendation of the gas companies that no change be

made to the Department's Guidelines regarding the treatment of multiple odor calls.

C. Role of Staffing Levels

1. Summary of Comments

The Department solicited comment on a number of questions relating to the role of staffing levels in future SQ Guidelines. Request for Comments at 2. In seeking comments on this issue, the Department noted that, although G.L. c. 164, § 1E "requires the Department to establish benchmarks for staff and employee levels of LDCs" and further "requires that no company may reduce its staffing levels below what they were on November 1, 1997," the statute neither defines whether staffing level considerations should apply only to union employees or to all employees nor whether staffing levels should include employees of non-regulated subsidiaries of the LDCs. Id. The Department also raised the issue of whether the lapse in time between enactment of the statute and adoption of a performance-based rate plan negates the November 1, 1997 requirement and noted the statute does not provide for any penalty for the LDCs that do reduce their staffing levels below 1997 levels. Id.

Several of the gas and electric companies posited that the Department's current system of monitoring staffing and service-quality levels through: (1) a comprehensive service-quality program to detect and penalize companies for degradations in service; (2) the establishment of a benchmark staffing level as of November 1, 1997 and annual reporting of staffing levels in each year thereafter; and (3) the establishment of a potential formal investigation into the causes and circumstances of a service decline in any case where performance falls below the established guidelines, fulfills the statutory mandate set forth in G.L. c. 164, § 1E (a) and therefore, recommended no changes in future SQ

Guidelines regarding staffing levels (KeySpan Comments at 14-21; New England Gas Comments at 16-22; NSTAR Comments at 19-25).

Fitchburg, KeySpan, New England Gas and NSTAR also addressed the specific statutory issues raised by the Department by noting that it is unreasonable to establish staffing level reductions as the trigger for an SQ investigation because staffing level reductions, *per se*, do not mean that a company's SQ has deteriorated (Fitchburg Comments at 6, KeySpan Comments at 19; New England Gas Comments at 20; NSTAR Comments at 23). These commenters stated that the Department has properly addressed staffing levels in its current SQ Guidelines by using staffing level data only in the context of determining whether service-quality deterioration in a given category was related to staffing level reductions (Fitchburg Comments at 6-7; KeySpan Comments at 19; New England Gas Comments at 20; NSTAR Comments at 23; see also WMECo Comments at 5). Accordingly, these commenters recommended that the Department need not define staffing level benchmarks nor determine whether they should apply to both union and non-union employees because the Department's current SQ Guidelines recognize that staffing level reductions are not necessarily related to service-quality deterioration (KeySpan Comments at 19; New England Gas Comments at 20-21; NSTAR Comments at 24; see also National Grid Comments at 5-7).

KeySpan, New England Gas and NSTAR also commented that the Department's current SQ Guidelines appropriately address the role of penalties relating to staffing levels and the significance of a company's November 1, 1997 staffing levels by tying service-quality penalties to performance and not to the maintenance of a particular staffing level as of a specific date (KeySpan Comments at 20; New England Gas

Comments at 21-22; NSTAR Comments at 24-25; see also Berkshire Gas Comments at 13). Therefore, because the Department's existing service-quality framework appropriately focuses first on the level of service currently provided by utilities and bases penalties only on deterioration in service, rather on the maintenance of a particular level of staff to provide that service, KeySpan, New England Gas and NSTAR recommended that the Department make no changes to future SQ Guidelines regarding staffing levels. This position was supported by AIM, which stated that, unless there is significant documented evidence that supports degradation in customer service, there should be no penalty provision for staff reductions since 1997, and Bay State, which stated that the Department's SQ Guidelines support the requirements of Section 1E(a) and (b) by providing for Department action at evidence of deterioration in service quality rather than a change in staffing level (AIM Comments at 1; Bay State Comments at 8).

Berkshire Gas commented that, with regard to the Department's specific staffing level issues, staffing level considerations should apply: (1) solely to union personnel, based on the language of G.L. c. 164, § 1E and the Department's August 2000 Interim SQ Order at 15;[6] and (2) only to employees of a company's regulated subsidiaries, consistent with the Department's ratemaking policies that establish rates based on the portion of a company's salaries and benefits relating to its regulated operations (Berkshire Gas Comments at 11-13). Moreover, Berkshire Gas recommended that the starting date of staffing level benchmarks, if any, should begin no earlier than the beginning of a company's performance-based rate plan (id.). WMECO's Comments addressed the Department's specific staffing level issues by noting that G.L. c. 164, § 1E

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6 See also National Grid Comments at 6-7.

does not clearly address how staffing levels should be addressed in the context of companies that are part of a holding company, like WMECO (WMECO Comments at 5-6). Because of the lack of statutory guidance on staffing level issues, WMECO recommended against the inclusion of staffing levels in future SQ Guidelines (id.).

Of the remaining commenters, only the Attorney General and the UWUA recommended changes in future SQ Guidelines to address staffing level issues. The Attorney General narrowly focused his comments on two issues: (1) the significance of the November 1, 1997 provision, noting that the Department should not "negate" the statutory "requirement" to maintain staffing levels "because of any lapse in time between the enactment of the statute and the adoption of a performance-based rate plan;" and (2) penalties, by contending that the Department has the statutory authority to assess penalties against companies that "fail to meet...service quality standards" (Attorney General Comments at 4).

The UWUA submitted lengthier comments on staffing levels. The UWUA recommended that the Department implement and enforce staffing level benchmarks (UWUA Comments at 8-16). The UWUA based its recommendation on allegations that staffing level reductions at some gas and electric companies were the cause of service quality deterioration (id. at 9-11). The UWUA also alleges that the Department has "tolerated massive staff reductions" without investigation (id. at 12). In response to the specific staffing level issues raised by the Department, the UWUA recommended that the Department should: (1) set staffing level benchmarks that include all of a company's union and non-union employees; and (2) set such benchmarks based on a company's staffing levels in existence as of November 1, 1997 (id. at 14-16).

2. The Department Should Maintain its Current SQ Guidelines Regarding Staffing Levels.

Based on the comprehensive rationale articulated by the gas and electric companies in their initial comments regarding the role of staffing levels, the Department should make no changes in any future SQ Guidelines regarding staffing levels. In particular, the Department should not make staffing levels a performance measure subject to penalty. Neither the Attorney General nor the UWUA explained why the reduction of staff should automatically result in penalties in the absence of an identified service-quality issue. A system that penalizes a utility for reductions in staff without any finding that those reductions have affected the level of service provided to customers would be patently unfair and unreasonable and would not likely withstand judicial scrutiny.

In fact, the majority of the commenters recognized that there is no basis for concluding that, merely because a company may have fewer employees in a given year than it had historically, its service quality *must* have degraded.[7] This is particularly true in the context of the Attorney General's and UWUA's recommendations to establish staffing level benchmarks based on a company's November 1, 1997 staffing levels. In the absence of evidence that a company's service quality has degraded from historic levels, it is irrelevant whether a company had a certain staffing level in November 1, 1997 or in November 1 of any subsequent year in which a company's service-quality performance is measured. Significantly, neither the Attorney General nor the UWUA offer a means to establish penalties relating to staffing levels (e.g., does 1 less

[7] Indeed, gas and electric companies have made significant investments in technology over the past several years that have improved SQ performance. Accordingly, the Department should not assume, based solely on a comparison of year-to-year staffing levels that a company's SQ performance has either improved or degraded as a result of changes in staffing.

employee in a given year compared to November 1, 1997 staffing levels justify the imposition of a penalty?). Accordingly, the Department should continue with its current system of considering staffing level data in the context of measuring service quality only where evidence of actual service-quality degradation is present.

D. Standardization of SQ Performance Benchmarks

1. Summary of Comments

In the Request for Comments, the Department solicited comment on whether the historical performance of each gas and electric company on SQ performance measures remains the best method for establishing performance benchmarks. Request for Comments at 2. The electric and gas companies generally supported the findings of the report entitled Summary of Findings Related To Service Quality Benchmarking Efforts, Navigant Consulting, Inc. (December 19, 2002) (the "Report") submitted to the Department on December 19, 2002 (Bay State Comments at 8-9; Berkshire Comments at 13; Fitchburg Comments at 8-9; KeySpan Comments at 21-24; National Grid Comments at 7; New England Gas Comments at 23-25; NSTAR Comments at 26-28; WMECO Comments at 7-8).

The gas and electric companies based their support for the continuation of company-specific historical benchmarks on the Report's conclusion that inherent differences among utilities in terms of data-collection methods, data quality, geography, distribution system design and configuration and weather impacts make it virtually impossible to establish standardized performance benchmarks that would have validity in terms measuring (and penalizing) the performance of a specific Massachusetts-based utility (see e.g., NSTAR Comments at 27, citing Report at 13, 16-23). The only service-quality measure that lends itself to standardization is Response to Odor Calls, which the

LDCs currently measure via a standardized 95 percent benchmark (see, e.g., Bay State Comments at 5-6; Berkshire Comments at 8-9; Fitchburg Comments at 4-5; KeySpan Comments at 11; New England Gas Comments at 13; NSTAR Comments at 16).

The Attorney General suggested that some service-quality categories such as call center answering, bill adjustments, customer satisfaction surveys and safety standards "may lend themselves to statewide or national benchmarks," while others, such as SAIDI and SAIFI, may not (Attorney General Comments at 5). Similarly, AIM's comments were not definitive, and suggested that it "may be appropriate" for the Department to "explore a broader-than-company benchmark" in some (unspecified) areas of service quality (AIM Comments at 1).

Constellation and the UWUA recommended that the Department establish standardized benchmarks for some measures. Constellation recommended that the Department establish standardized benchmarks for "market access services" such as: (1) the provision of interval data; (2) enrollment; (3) billing-related services; and (4) distribution company systems and personnel relating to the provision of services to competitive suppliers (Constellation Comments at 2-7, 10). The UWUA recommended that the Department establish standardized benchmarks for consumer division cases and keeping service appointments, as well as continuing existing standardized benchmarks for Response to Odor Calls (albeit at a benchmark of 98 percent) (UWUA Comments at 16-17).

2. The Department Should Maintain its Current Guidelines Regarding the Establishment of Company-Specific Benchmarks.

The Department should reject the recommendations of AIM, the Attorney General and the UWUA which, in some form, contend that the Department should establish

standardized benchmarks for various service-quality measures. The AG and the UWUA recommend specific categories for standardized benchmarks, the majority of which are inappropriate because of the varying technologies, sizes and service territory characteristics of the Massachusetts gas and electric companies. For example, the Attorney General's recommendation to establish standardized benchmarks for Call Answering simply ignores the fact that each LDC has its own level and type of technology and unique customer demographics that factor into the company's performance level. Therefore, the imposition of a standard benchmark has the potential to impose significant costs on the utility to improve call-response time to a level that exceeds the utility's resident capabilities. Conversely, the imposition of a standard benchmark may actually result in a lower standard for a utility that has historically performed at a relatively high level.

Similarly, Billing Adjustments and Consumer Division Cases are measures that are equally unsuitable for standardized benchmarks because a utility's performance on these measures is a function of billing-system capabilities, customer demographics and other factors unique to each utility system. The imposition of a standardized benchmark could impose a significant burden on some companies and represent a reduced service level for other companies. These types of results are inconsistent with the Department's policy objective of establishing a service-quality measurement system that will ensure that customers receive the service to which they are entitled. D.T.E. 99-84, at 43 (August 17, 2000)

The Department should also reject Constellation's recommendations to establish standardized benchmarks for "market access" services. The Department's SQ Guidelines

are properly founded on the principle of ensuring that utility customers are protected from degradations in service as a result of the imposition of performance-based rates (see G.L. c. 164, § 1E), not on the protection of business-savvy competitive suppliers with the means to protect their interests through contractual relationships with a utility. Accordingly, the Department should not establish benchmarks for "market access" services.

E. SQ Incentives

1. Summary of Comments

The Department solicited comment on whether gas and electric companies should be allowed to collect incentives for SQ performance. Request for Comments at 3. The gas and electric companies generally supported the adoption of a symmetrical system of financial penalties and rewards as part of its SQ Guidelines because: (1) the possibility of collecting a financial reward for service-quality improvements will provide a strong incentive to utilities to move forward with service-related investments that benefit customers; and (2) the potential for a financial reward will offset the impact of penalties that have the potential to result where the utility is held to an ever-increasing performance benchmark during the term of a SQ plan (Fitchburg Comments at 9; KeySpan Comments at 24-25; New England Gas Comments at 25-26; NSTAR Comments at 28-29; see also Bay State Comments at 9-10; National Grid Comments at 11-12 and WMECO Comments at 8). In addition, the Attorney General and Constellation expressed support for incentives, although the Attorney General prefaced his support on further review and

study by the Department (Attorney General Comments at 5; Constellation Comments at 11).[8]

2. The Department Should Make Available Incentives for Superior SQ Performance.

Of those entities that provided the Department with comments on this issue, each entity expressed support for the adoption by the Department of incentives for superior service-quality performance. Accordingly, to the extent that the Department continues to subject companies to penalties for service-quality degradation, the Department should adopt a symmetrical system of incentives: (1) to reward companies for improving service-quality performance through investments or other means; and (2) provide companies with PBR plans with a means of offsetting penalties in categories where their performance exceeds their level of performance at the beginning of their PBR plan, but which reflects a degradation of performance over the most recently established benchmarks for that category.

F. Customer Service Guarantees

1. Summary of Comments

The Department solicited comment on whether future Guidelines should require: (a) payment to customers whether or not the customer requests the credit; and (b) classification as a missed service appointment if the LDC contacts the customer within four hours of the missed appointment and re-schedules the appointment. Request for Comments at 3.

8 AIM, the IBEW and the UWUA did not comment on whether incentives should be incorporated in future Department Guidelines.

a. Payment of Customer Service Guarantees

Most of the gas and electric companies either supported, or did not object to, a provision in future SQ Guidelines requiring companies to issue customer service guarantees automatically (Bay State Comments at 10; Berkshire Comments at 17; KeySpan Comments at 28; National Grid Comments at 12; New England Gas Comments at 29; NSTAR Comments at 32-33).[9] National Grid and WMECo expressed support for automatic payments in some instances, but opposed an automatic payment if the company fails to notify a customer of a scheduled non-emergency outage (National Grid Comments at 13; WMECo Comments at 9). These companies stated that, in general, although they make every effort to identify customers that will be affected by a planned outage and properly notify them in advance, there may be times where an affected customer does not receive proper notice (National Grid Comments at 13; WMECo Comments at 9). In these instances, the only way that the companies would know if that customer actually was without power is if the customer notifies the company that service was out (National Grid Comments at 13; WMECo Comments at 9). Accordingly, the companies could not send an affected customer an automatic payment without first being notified by the customer. Of the remaining commenters on this issue, each supported the Department's adoption of a policy requiring companies to issue customer guarantee payments automatically (AIM Comments at 2; Attorney General Comments at 6; UWUA Comments at 18).

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9 Fitchburg neither expressed support nor opposition to this proposal, but noted that it currently does not issue customer service guarantee payments automatically, and would have to implement a burdensome and costly process in order to do so (Fitchburg Comments at 11).

Because NSTAR's current system does not provided automatic customer guarantee payments, NSTAR requested that (in the event of a requirement to automatically pay customer guarantees) the Department: (1) allow NSTAR sufficient time to change its systems and processes to allow for automated payments; or (2) allow the Company to demonstrate to the Department that the costs that would be incurred to implement a new system are greater than the benefits of implementing the system change (NSTAR Comments at 32-33).

b. Classification of Service Appointments Rescheduled Within 4 Hours

The gas and electric companies opposed classifying service appointments that are rescheduled within 4 hours as "missed" (Bay State Comments at 10-11; Berkshire Comments at 17-18; Fitchburg Comments at 11-12; KeySpan Comments at 29; National Grid Comments at 13; New England Gas Comments at 30; NSTAR Comments at 34; WMECo Comments at 9). The UWUA addressed the issue indirectly by recommending that companies should be able to avoid a customer guarantee payment if the customer is called in advance of the appointment and reschedules the appointment at a time convenient to the customer (UWUA Comments at 18). AIM noted that it did not support the payment of customers if the company reschedules a service appointment within 4 hours (AIM Comments at 2). The Attorney General recommended only that "if the LDC is more than four hours late for a scheduled service appointment, it should automatically pay the customer, regardless of whether the LDC contacts the customer after the appointment is missed and reschedules." (Attorney General Comments at 6). The Attorney General did not comment on the classification of "missed" appointments that are rescheduled within 4 hours.

2. The Department Should Generally Maintain its Current Guidelines Regarding Service Appointments.

Based on the Initial Comments, the Department should generally maintain its current SQ Guidelines regarding Service Appointments Kept, as they relate to: (1) the payment of customer guarantees; and (2) the treatment of service appointments that are rescheduled within 4 hours. To the extent that the Department determines that automatic payments should be part of the program, the Company reiterates its request that the Department either allow the Company sufficient time to change its program, or allow the Company the opportunity to justify the structure of its current customer guarantee program.

In addition, the Department should not change its SQ guidelines to classify service appointments that are rescheduled within 4 hours as "missed." No commenter on this issue offered support for a change in the approach. As the Company indicated in the initial comments, this change would significantly impair the flexibility of the Company to allocate resources efficiently throughout the service territory to respond to emergent or emergency events that arise on a day-to-day basis. Accordingly, no change to the Department's SQ Guidelines is necessary or warranted.

G. Property Damage

1. Summary of Comments

The Department requested comments on whether its reporting requirement regarding losses related to damage of company-owned property should be made a penalty measure in future SQ Guidelines. Request for Comments at 3. None of the commenters supported conversion of this requirement to a penalty measure given the lack of a nexus between service quality and damage to company property (see AIM Comments at 2; Bay

State Comments at 12; Berkshire Comments at 18; Fitchburg Comments at 12; KeySpan Comments at 30; National Grid Comments at 14; New England Gas Comments at 32-34; NSTAR Comments at 36-39; WMECO Comments at 9). However, the Attorney General recommended that the Department change the measure to require companies to report on damage to customer-owned or third-party-owned property, suggesting that these measures "better reflects" service quality and is of greater concern to customers (Attorney General at 6).

2. The Department Should Not Make Damage to Company Property a Penalty Measure.

Given the arguments submitted by the participants in the proceeding regarding the lack of nexus between damage to company property and service quality performance, and the lack of support for making damage to company property a penalty measure in future SQ Guidelines, there is no basis for the Department to change its Guidelines to make damage to company property a penalty measure. Moreover, the Department should reject the Attorney General's recommendation to require LDCs to report on damage to customer or third-party property. During the year, the Company may receive claims from customers and other third parties for a variety of reasons. The Company has no control over the actions of customers or third parties to seek damages from the Company and the Company should be free to resolve claims of customers or third parties without concern that settling the claim will somehow count against the Company in the annual SQ filing. The Company may have to make a decision to settle an issue with a customer even though the Company's service levels were appropriate. Accordingly, the Department's current reporting requirements regarding damage to company property should not be

altered in future SQ Guidelines to require reporting of additional information or to subject the measure to penalties.

H. Line Losses

1. Summary of Comments

The Department solicited comment on whether line loss data should be made a reporting requirement in the future SQ Guidelines. Request for Comments at 3. None of the commenters opposed maintaining line loss or unaccounted-for gas data as reporting requirements in future SQ Guidelines (Bay State Comments at 13; Fitchburg Comments at 13; KeySpan Comments at 32; National Grid Comments at 15; New England Gas Comments at 35; NSTAR Comments at 40).

Constellation recommended that the Department make line losses "part of the service quality guidelines" (Constellation Comments at 11). Conversely, WMECo opposed making line losses a service quality measure (WMECo at 10). AIM recommended that the Department require line-loss data collection to be standardized (AIM Comments at 2). The Attorney General recommended that the Department expand the line loss reporting requirement by requiring companies to incorporate a "self assessment section" wherein each company would describe the root causes for performance changes from prior years (Attorney General Comments at 6). Lastly, the UWUA recommended that, although line loss and unaccounted-for gas data should not be made a penalty measure, the Department should investigate reports of unusually high line losses or unaccounted-for gas (UWUA Comments at 20).

2. The Department Should Maintain its Current Guidelines Regarding Line Loss and Unaccounted-For Gas Data.

The comments submitted on this issue either favor, or do not oppose, continuing to require the reporting of line losses and unaccounted-for gas data to the Department. NSTAR Electric does not oppose a requirement that companies include information in their annual reports describing the reasons for any significant year-to-year changes in line loss data, as suggested by the Attorney General.

I. Double Poles

1. Summary of Comments

The Department solicited comment on whether it would be appropriate to include timely removal of double poles as a service quality measure. Request for Comments at 3. Only Fitchburg, National Grid, NSTAR, and WMECo (the "Electric Companies") and the Attorney General and the UWUA submitted comments on this issue. The Electric Companies opposed including the removal of double poles as an service-quality measure because: (1) the removal of double poles is neither wholly within the control of the Electric Companies to accomplish, nor necessarily related to the level of service provided by the Company to its customers; and (2) the Department is investigating the "root cause" of double poles in its D.T.E. 03-87 proceeding and therefore it is not appropriate to include the matter as an service-quality category without the conclusion of that proceeding (see Fitchburg Comments at 14; National Grid Comments at 15 -16; 40-42; WMECO Comments at 12-13). AIM's comments were consistent with the Electric Companies (AIM Comments at 2).

The Attorney General recommended that the Department include the removal of double poles as a service-quality measure, subject to both reporting requirements and

possible penalties because, with the implementation of the double-pole database, the electric companies should have the necessary information to timely remove double poles or explain why it has not been done (Attorney General Comments at 7). The UWUA recommended that the Department consider establishing a benchmark for each electric company to further reduce the backlog of double pole sets (e.g., a specific percentage each year), subject to penalty (UWUA Comments at 21).

2. The Department Should Not Impose SQ Penalties Relating to the Removal of Double Pole Sets.

The Department should reject the arguments of the Attorney General and the UWUA regarding the inclusion of double pole set removal data as a penalty measure in future SQ Guidelines, until such time as the Department has completed its investigation of the "root cause" of double poles in its separate docket, D.T.E. 03-87.[10] As noted in its Initial Comments, NSTAR Electric supports the need to move forward on the development of a workable system to ensure the timely removal of double pole sets, but recommends that the Department consider incorporation of double-poles data into the SQ program only upon a determination by the Department that the appropriate apportionment of responsibility to utilities under its jurisdiction is achievable. D.T.E. 03-87, at 15.

J. SAIDI/SAIFI

1. Summary of Comments

In its Request for Comments, the Department sought comments regarding whether electric companies should continue to be allowed to use their own company-

10 With regard to the Attorney General's recommendation to require companies to report the status of their progress in removing double pole sets, the Department already requires such reporting on a semi-annual basis and need not incorporate such a provision in its SQ Guidelines. See D.T.E. 03-87 at 15.

specific definitions for "sustained outages or interruptions," "momentary outages," and "excludable major events," to measure SAIDI and SAIFI performance or whether it is appropriate to develop new definitions for these components of the SAIDI/SAIFI calculation. Request for Comments at 3. In its initial comments, NSTAR recommended changing the definition of: (1) "sustained outages/interruptions" from an outage of 1 minute or more to an outage of 5 minutes or more in length; and (2) "momentary outage," from a definition of less than 1 minute to an outage of less than 5 minutes in length (NSTAR Electric Comments at 42-43). NSTAR recommended this change because the 5-minute sustained outage definition is standard industry practice and is necessary to correspond with the time needed for operation of current state-of-the-art automated sensing and switching devices installed within the NSTAR Electric service territory and the service territories of other electric companies operating in the Commonwealth (see, e.g., WMECO Comments at 14).

In addition, a recommendation was made to the Department to adopt the "Major Event Day" concept encompassed in IEEE Std. 1366-2003 in place of "Excludable Major Events," as currently defined in the Department's SQ Guidelines (Fitchburg Comments at 15, National Grid Comments at 8 -10, Attachment 1; WMECo Comments at 7). Of the remaining commenters that addressed the issue of SAIDI/SAIFI definitions, each expressed support for the development of "uniform definitions" with company-specific definitions used for the purpose of determining and assessing penalties (see AIM Comments at 2; Attorney General Comments at 7-8, UWUA Comments at 21-22). The UWUA acknowledged, however, that it would likely be impossible to develop uniform SAIDI/SAIFI benchmarks for each electric company (UWUA Comments at 22).

2. The Department Should Not Adopt the IEEE Definition of "Major Event Day" to Determine Excludable Events in Measuring SAIDI and SAIFI.

In this proceeding, a proposal is before the Department to replace the definition of "Excludable Major Events" contained in the SQ Guidelines with the "Major Event Day" definition embodied in IEEE Std. 1366-2003. NSTAR Electric does not support this change to the Department's SQ Guidelines. Although IEEE Std. 1366-2003 may be a reasonable way to identify an outage level that is statistically "normal" for a particular utility's system (and to separate outages that are "unusual" for the system), the conceptual basis of IEEE Std. 1366-2003 is not consistent with the Department's service-quality goals because the utility's own actions largely determine the number and type of outages excluded. Unlike the current standard, IEEE Std. 1366-2003 may allow a utility that has limited system redundancy or prolonged restoration times to gain an exclusion that is not available under current methodology. In addition, given that excludable outages are determined by the utility's own operating experience, the implementation of IEEE Std. 1366-2003 offers no more "uniformity" than the current system.[11] Under IEEE Std. 1366-2003, the types of outages that are excludable will differ from year-to-year for each utility and from utility to utility. As a result, the underlying conceptual basis of the standard is not consistent with the Department's SQ policy goals of: (1) establishing an objective and uniform system for all utilities; and (2) ensuring that utilities have a motivation to conduct business in a manner that ensures customers receive

11 As discussed below, outage events are excludable under the current system where 15 percent of customers are affected. The IEEE Std. 1366-2003 would replace the "15%" formula with a formula referred to as the "2.5β Methodology." However, the number and type of exclusions produced by the new formula would continue to differ between utilities, with the disparity in the number and type of exclusions among companies likely increasing under the IEEE Std. 1366-2003.

the level of service to which they are entitled. Thus, adoption of IEEE Std. 1366-2003 would not provide any benefit to the Department's SQ Program and may even constitute a step back in the Department's efforts to measure the level of service provided to customers. See, Service Quality Guidelines, D.T.E. 99-84, at 43 (August 17, 2000).

A. Calculation of SAIDI/SAIFI

The Department's existing methodology for calculating SAIDI/SAIFI performance is consistent with IEEE Std. 1366-1998, which is the predecessor of IEEE Std. 1366-2003 under consideration in this proceeding. Under IEEE Std. 1366-1998, which established a set of terms and conditions to foster uniformity in the development of distribution service reliability indices, reliability of electric service is measured by calculating ratios of customer interruptions and customer outage durations to total number of customers served. IEEE Std. 1366-1998 suggests, but does not prescribe, the type of outages that may be excluded from reliability index calculations, which include "major events, scheduled interruptions, and interruptions caused by other portions of the electrical system." IEEE Std. 1366-1998 at page 11.

Under IEEE Std. 1366-1998, "Major Event" is defined as "a catastrophic event" that exceeds the design limits of the electric power system and that is characterized by the following (as defined by the utility): (a) extensive damage to the electric power system; (b) more than a specified percentage of customers simultaneously out of service; and (c) service restoration times longer than specified. Some examples are extreme weather, such as a one-in-five year event, or earthquakes. In 2004, 68 U.S. electric utilities participated in the Edison Electric Institute (EEI) 2003 Reliability Report, which indicated that approximately 36 percent of participating utilities follow the IEEE Std.

1366-1998 methodology. These utilities classified a "Major Event" in a variety of ways, with the majority reporting use of an exclusion standard based on 5%, 10% or 15% of customers with simultaneous outages due to a major storm and with 10% being the predominant exclusion level. Under the Department's SQ Guidelines, excludable major events are based on an outage level of 15% of customers.[12]

Therefore, under the Department's SQ Guidelines, SAIDI/SAIFI is calculated by first tabulating the total outage events in terms of both the numbers of customers affected and the total number of outage minutes. From these totals, certain types of outages are excluded, which are events involving: (1) Excludable Major Events; (2) Planned Outages, or scheduled interruptions; (3) Non-Primary Distribution Circuit outages, i.e., a single customer outage or a single secondary line transformer outage; (4) Momentary Outages, i.e., outages of less than one minute in duration; (5) restoration outages, i.e., outages caused by the need to perform switching in the course of restoring service; and (6) customer equipment outages (SQ Guidelines at Section V). The net total of numbers of customers affected and outage minutes is used to calculate the SAIDI/SAIFI indices. Only excludable major events and planned or scheduled outages are referenced in IEEE Std. 1366-1998.

The Department's existing SQ Guidelines define Excludable Major Events to be a major outage event that meets one of three criteria. These criteria are: (1) the event is caused by earthquake, fire, or storm of sufficient intensity to give rise to a "state of emergency" as proclaimed by the Governor; (2) any other event that causes an unplanned interruption of service to 15 percent or more of the electric company's customers; and

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12 State jurisdictions are not required to adopt IEEE standards for the purpose of measuring electric reliability and, in fact, IEEE Std. 1366-1998 was not adopted in all state jurisdictions.

(3) an event that results from a disturbance of a transmission, power supply or other system not owned or operated by the electric utility (SQ Guidelines at I.B). As noted above, these criteria are the commonly accepted criteria in state jurisdictions across the country for determining "Major Events" under IEEE Std. 1366-1998. If adopted by the Department, IEEE Std. 1366-2003 would determine outage exclusions based on the a utility's operating experience rather than the Department's established criteria.

B. Development and Operation of IEEE Std. 1366-2003

In 2004, IEEE and the American National Standards Institute ("ANSI") approved revisions to IEEE Std. 1366-1998 to supercede previous definitions for "Major Events' to incorporate the "Major Event Day" concept, which is a new methodology to determine the "major events" that would be excludable from the SAIDI/SAIFI calculation. In particular, IEEE Std. 1366-2003 is aimed at replacing the "15%" standard for exclusion. To achieve this objective, IEEE Std. 1366-2003 relies on a mathematical computation (i.e., the 2.5β Methodology) using daily SAIDI values for a given utility system to create a threshold for SAIDI performance representing the "normal" day-to-day operation of the utility system. Daily SAIDI values that exceed the threshold are excluded from the calculation of SAIDI for purposes of establishing an annual performance number under the theory that these are "unusual" events that are not representative of a utility's day-to-day operations, and therefore, should not be factored into the SAIDI and SAIFI performance calculations.[13]

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13 Supporters of IEEE Std. 1366-2003 promote the fact that, by reporting exclusions in a manner consistent with the standard, they could be separately analyzed by the Department. However, NSTAR Electric currently provides the Department with a quarterly fling that details the Company's significant outages by district, and describing preventative measures implemented by the Company to prevent future outages. Therefore, there appears to be no incremental benefit to the Department regarding its ability to analyze significant outage events under the proposed IEEE standard.

Proponents of IEEE Std. 1366-2003, note that "exclusion" definitions that are based on the percentage of customers interrupted over a period of time do not effectively present the resultant trends of day-to-day operations. Thus, under the IEEE 1366-2003 methodology, performance is segmented into two different operational modes: day-to-day and crisis mode, with unusual events constituting "crisis" mode and thereby excluded from the SAIDI calculation. As a result, under IEEE Std. 1366-2003, "excludable major events" are defined on a company-specific basis through a mathematical computation of the system's operational experience rather than by application of a pre-determined set of objective criteria applied across utility systems.

This "company-specific" designation of Excludable Major Events is contrary to the Department's overall service-quality goals because exclusions may be driven by the Company's own actions. Specifically, outage events are excludable under IEEE Std. 1366-2003 if, based upon the utility's previous operating "experience," the events were deemed "unusual" in relation to the "day-to-day" operations of the utility using the 2.5β Methodology. However, electric utility systems may be designed to operate at higher or lower levels depending upon the risk that the utility is willing to accept in terms of service outages and system disruptions. Thus, under IEEE Std. 1366-2003, it is possible for a utility to experience one or more system events in a performance year resulting from limited system redundancy, or to experience outages with prolonged restoration times, and to have those outages excluded because the "normal operation" of the system does not require performance to the level necessary to sustain service. In effect, the IEEE Std. 1366-2003 is designed to exclude outages based on their relative severity for the particular utility system (without regard to the factors causing the outage), rather than

being determined on the basis of objective criteria that is consistently applied across utilities.

A second factor driving exclusions under IEEE Std. 1366-2003 is that the 2.5β Methodology uses daily SAIDI values to calculate the threshold for determining excludable major events. The use of daily SAIDI values in the calculation means that the designation of excludable major events is a function of outage duration (i.e., the utility's response to the outage event) and not just the number of customers affected, as is the case under the Department's current methodology. With many events, response times are a factor of preparation, planning, staffing and the utility's ability to mobilize its resources effectively. However, under the 2.5β Methodology, events have the potential to be deemed "unusual" for the system because of the lengthy duration of an outage, and therefore, the utility's response time factors directly into the determination of excludable outages. In fact, outages may be excludable even when a relatively small proportion of the utility's customer base is affected (albeit for an extended time period), which is not the case under the Department's SQ Guidelines. Under the Department's SQ Guidelines, only the number of customers is used to determine excludable major events, and therefore, the utility's response time is not a factor in determining whether an event is excludable for purposes of determining SAIDI/SAIFI performance.

The proponents of IEEE Std. 1366-2003 claim that the primary benefit of implementing the standard to determine excludable events is that (1) by separating "MEDs" or unusual events from day-to-day performance, the Department will be able to more clearly assess the utility's overall day-to-day reliability performance (National Grid Comments at 19). However, it is unclear how employing a complicated mathematical

construct to re-define excludable major events on a continually evolving basis will provide the Department with greater ability to "assess" day-to-day performance of the utility. More importantly, the Department has not indicated that its intent is to measure service quality based on a distinction between "day-to-day" service and service under "unusual" system conditions. Rather, the underlying principle of the Department's SQ Program (and the penalty/offset mechanism) is to protect customers from utility conduct that decreases the level of service provided to customers. Interim Order at 43. Thus, a conceptual underpinning of the Department's SQ Program is the distinction between factors that are outside of management control (the impact of which are mitigated through the implementation of deadbands and penalty offsets) and factors within management control (the impact of which are subject to service-quality penalties where utilities have failed to "conduct their business in a manner that maintains service quality"). Id. at 49, fn.37. IEEE Std. 1366-2003 blurs this distinction by creating a definition for Excludable Major Events that is based, in large part, on the utility's own performance and operating design.

Proponents also claim that: (1) IEEE Std. 1366-2003 allow for better optimization of expenditures to target programs and projects that "truly enhance" reliability where required (id. at 24); and (2) IEEE Std. 1366-2003 "has the potential to help move" utilities toward a more common basis for regulatory reporting with other companies (id. at 25; WMECo Comments at 14). The proponents of IEEE Std. 1366-2003 do not explain how implementation of the "Major Event Day" definition in place of the Department's Excludable Major Event standard will accomplish these objectives, especially in terms of

"allowing for better optimization of expenditures to target programs and projects" to enhance reliability.

In terms of providing a "common basis" or uniform standard across utilities, it should be noted that it is only the 2.5β Methodology that is the common denominator across utilities under the IEEE Std. 1366-2003; the determination of excludable events under the IEEE standard is, in fact, entirely utility specific. The IEEE methodology computes the outage level that is statistically "normal" for each individual utility and excludes "non-normal" events for that utility. As a result, the criteria for excludable major event will be entirely subjective, varying from year-to-year and from utility-to-utility, depending on system-specific design and outage response activities. Therefore, although IEEE Std. 1366-2003 could be "commonly" implemented by all of the Massachusetts electric companies, the result would not represent any more of a "common basis" for the determination of excludable outages and associated regulatory reporting than the current methodology.

Accordingly, none of these claims justify implementation of IEEE Std. 1366-2003. The conceptual basis of IEEE Std. 1366-2003 is not consistent with the Department's service-quality policy goals because it operates to exclude outages that may result from: (1) the utility's own choices regarding system design standards; and (2) the utility's response time to outage events. As a result, the underlying conceptual basis of the standard is not consistent with the Department's SQ policy goals of ensuring that utilities conduct business in a manner that ensures customers receive the level of service to which they are entitled.

III. REPLY TO MISCELLANEOUS RECOMMENDATIONS

A. Attorney General's Additional Recommendations

1. Summary

The Attorney General's Comments included recommendations prepared by Energy Advisors, LLC (Attorney General Comments, Attachment 1). Based on this document, the Attorney General recommends that the Department:

(1) make its penalty provisions more effective by requiring improved performance, eliminating the maximum penalty per-measure or raising the overall two-percent penalty cap, limiting penalty exposure to the most critical performance areas, adjusting penalty formulas to accelerate the rate at which penalties accrue, and reducing or eliminating the availability of offsets for better-than benchmark performance in particular areas;

(2) improve service-quality measures by revising the allocation of penalty exposure and determining if the current list of measures represents those areas of performance most critical to customers;

(3) enhance Department review of annual SQ reports;

(4) require companies to issue annual service-quality "report cards" to customers informing them of the company's performance over the prior year; and

(5) ensure data quality and integrity by using precise definitions and protocols in the Department's SG Guidelines.

(Attorney General Comments, Attachment 1 at 1-2).

2. NSTAR Response

The Department should reject the Attorney General's recommendations that are aimed at modifying the Department's penalty provisions for several reasons. First, the Department does not have statutory authority to levy penalties in excess of 2 percent of transmission and distribution revenues for the previous calendar year (see G.L. c. 164, § 1E(c)). Second, the elimination of the Department's penalty-weighting system would

result in a penalty system that is arbitrary and unreasonable and that would require the Department to justify, in every case, the reasons for its selection of a penalty level. This inevitably will lead to disparities and inequities in relation to the enforcement of the SQ Program and will also undermine the incentive structure inherent in the SQ Program. With a pre-determined penalty-weighting system, the Department does not have to make subjective judgments about the appropriate penalty level and penalties can be assessed on an objective, mathematical basis so that fairness and effectiveness is maintained.

The Attorney General further recommends that the Department alter its penalty formula to allow higher penalties in "critical performance areas," or adjust the penalty formula to increase the rate at which penalties accrue. Lastly, the Attorney General suggests revisiting the categories for which penalties may be imposed. All of these recommendations are without merit. The single purpose of establishing a penalty weighting system is to allocate a greater share of the maximum potential penalty to those measures that are of "critical" import to the safety and reliability of utility service. For example, the Department has accorded the greatest weight to gas and electric reliability and safety measures, which account for almost half of the total maximum penalty. The Department's penalty calculation and allocation methodology was determined following substantial consideration in the course of a three-year proceeding and is based on the input of all interested parties, including the Attorney General. The Attorney General simply is asking the Department to create a system that lacks consistency and objectivity so that penalties can be assessed based on a host of non-quantitative and subjective factors.

Second, the Department should not require utilities to improve service over historical levels through the generic consideration of its SQ Guidelines. The improvement of customer service is a company-specific matter that should be contemplated in a PBR proceeding where the utility's cost structure is reviewed and developed in conjunction with the service-quality objectives. On a generic basis, the Department's SQ Guidelines properly focus on ensuring that service quality does not degrade from a company's historical performance. The Attorney General acknowledges that "there is a limit on how far the benchmarks can be strengthened because, at some point, there will be diminishing returns from additional investment in service quality" (Attorney General Comments at 3). Accordingly, future SQ Guidelines should continue to focus on ensuring that service-quality performance does not degrade from year-to-year, rather than requiring improved performance on an annual basis.

With regard to the Attorney General's non-penalty-related recommendations, the Company does not oppose either the distribution of SQ "report cards" on an annual basis, or, as a general proposition, the development of definitions designed to ensure that companies have clear guidelines on which to measure service quality.

B. IBEW and UWUA Recommendations

1. Summary

IBEW and UWUA made various recommendations addressing issues beyond those identified by the Department in its Request for Comments in this proceeding. For example, IBEW recommended that the Department enhance its SQ Guidelines by adding a "strong safety component" (IBEW Comments at 7). IBEW specifically recommended that the Department: (1) add a provision requiring outside electrical contractors to be

trained through a state- and federally-approved apprenticeship training program (id. at 8-9, 11-12); (2) require electric companies to use an "open and fair" procurement process to retain outside electrical contractors (id. at 12-13); and (3) adopt penalties for any safety-related guidelines (id. at 13). The IBEW supported its recommendations by comparing the level of penalties applicable to the electric company safety-related service quality categories (e.g., 10 percent for lost work-time accidents) with the penalty levels applicable to gas-company safety-related SQ measures (e.g, 45 percent for odor call response time), and concluded that the Department is paying "scant attention" to electric company safety (id. at 4). The IBEW also criticized the Department's current SQ Guidelines by citing various manhole-related incidents and noting that the electric "companies' intense focus on reliability . . . contrasted with the failure to track manhole explosions, shows the potential "perverse" effect of [the Department's existing] service quality standards" (id. at 6-7).

Separately, the UWUA recommended that the Department: (1) allow parties in the future to conduct discovery and participate in hearings relating to the annual service quality reports; and (2) adopt non-punitive inspection and maintenance ("I&M") guidelines that would require each company to routinely inspect and report on the status of needed and completed repairs for key infrastructure components, including overhead and underground lines, substations and poles (UWUA Comments at 22-27).

2. NSTAR Response

In responding to these comments, NSTAR would first like to comment that NSTAR, IBEW, and UWUA share a commitment to providing safe and reliable service to customers. IBEW's comments focus on ensuring that any outside contractors retained

by the Company be adequately trained. NSTAR concurs with this proposition and has established a procurement structure that ensures that only the highest quality contractors are working on the NSTAR system.

In that regard, all construction and maintenance activities performed on an electric utility system must conform to the requirements of the National Electric Safety Code (NESC). As the operator of an electric utility system, it is NSTAR Electric's obligation to ensure that its system is designed, constructed and maintained to conform to NESC standards. Accordingly, NSTAR Electric has developed a comprehensive set of construction and maintenance work standards based on NESC requirements. Any contractors working on the NSTAR Electric underground distribution system are required to adhere to the Company's work standards.[14] For this reason, the process used by the Company to procure services from electrical contractors is aimed at identifying and qualifying electrical contracting firms that have solid management structures, financial integrity and a high level of expertise, as well as being knowledgeable about the Company's construction and maintenance standards.

As noted above, NSTAR Electric's purchasing department maintains a list of pre-approved, qualified contractors who are permitted to participate in the procurement process for various types of work. NSTAR Electric hires only those contractors that have significant expertise in performing construction and maintenance services on electric utility system equipment. An electrical contractor that is hired by the Company has the responsibility to perform all contracted services in accordance with NSTAR Electric construction standards, safety policies and all applicable laws.

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14 Specific licensing requirements are not a component of the NESC, and therefore, are not a requirement to perform construction and maintenance activities on the NSTAR Electric system.

Before a contractor is placed on the pre-approved bidders' list, NSTAR Electric evaluates the contractor based on a number of criteria. Primarily, NSTAR Electric will: (1) conduct an extensive interview with the contractor to assess their level of experience and expertise in relation to the work in question; (2) verify references to confirm technical competence; and (3) perform a financial background check to determine the financial stability of the contractor. A team consisting of representatives from the Company's engineering, operations and/or safety and training departments may participate in the interview. At times, NSTAR Electric will request the contractor to demonstrate certain skills, such as cable splicing.

In addition, NSTAR Electric reviews the overall performance of the pre-approved contractors on an annual basis. Because the electrical contractors that are pre-approved by the Company are well-established entities that employ a skilled and dependable work force, there is generally little variation in the list from year-to-year and NSTAR Electric typically has many years of experience with each of the contractors on the list.

In that regard, there are three primary groups that are qualified to perform construction and maintenance work on the NSTAR Electric distribution system. These groups are: (1) NSTAR Electric employees; (2) electric contractors represented by collective bargaining units; and (3) electric contractors with no bargaining unit affiliation. NSTAR Electric employees are hired and trained by the Company. Electrical contractors that are represented by a collective bargaining unit generally receive training within their bargaining unit. Electrical contractors with no bargaining unit affiliation receive training from a number of places including cable manufacturing companies and the Northeast

Public Power Association, which is an organization that offers training for employees of municipal electric companies.

Any deficiencies in workmanship quality or safety are documented by the Company. In cases where the Company has detected an adverse performance trend, NSTAR Electric will require the contractor to provide an improvement plan in writing to remedy the Company's concerns within a specified time frame. The Company's safety department is notified that the contractor has been put on notice and that the contractor will not be allowed to participate in bids until steps have been taken to rectify the situation. If the contractor fails to show improvement, the contractor is removed from any ongoing projects and is prohibited from participating in future bid solicitations on the NSTAR Electric system.

In addition to the fact that the Company has in place a comprehensive system to ensure that contractors are trained and qualified, it should be noted that requiring the Company to train outside contractors will increase costs for NSTAR customers with a benefit accruing to other entities served by the contractors. Accordingly, the Department need not require additional training of outside contractors as part of its SQ Guidelines.

With regard to the IBEW's comment alleging that companies are focusing on reliability issues to the detriment of safety issues, the IBEW claims that "but for" electric companies focus on providing reliable electric service, manhole cover incidents would be mitigated. However, the IBEW ignores the fact that the responsibility of electric companies to provide reliable service stems not from the Department's SQ Guidelines, but from state, regional and national regulatory policies that govern this basic obligation. See, e.g., 2004 NSTAR Transmission and Distribution Planning Report (Executive

Summary at 5-22). Accordingly, there is no basis for suggesting that the Department's SQ Guidelines somehow provide incentives to electric companies to ignore public safety obligations.

With regard to the UWUA's recommendation for the adoption of non-punitive I&M guidelines, the Company currently routinely inspects and maintains its electric and gas distribution system and upgrades the system when necessary. See, e.g., 2004 NSTAR Transmission and Distribution Planning Report et seq. Accordingly, additional I&M guidelines are not necessary.

IV. CONCLUSION

NSTAR appreciates the opportunity to respond to the initial comments submitted to the Department in this proceeding and looks forward to participating further in the Department's deliberations on SQ issues.